

MARK STEGER SMITH  
Assistant U.S. Attorney  
U.S. Attorney's Office  
2601 Second Avenue North, Suite 3200  
Billings, MT 59101  
Ph: (406) 247-4667; Fax: (406) 657-6058  
[mark.smith3@usdoj.gov](mailto:mark.smith3@usdoj.gov)

JEAN E. WILLIAMS  
Deputy Assistant Attorney General

LUTHER L. HAJEK (CO Bar 44303)  
United States Department of Justice  
Environment and Natural Resources Division  
999 18th St., South Terrace, Suite 370  
Denver, CO 80202  
Ph: (303) 844-1376; Fax: (303) 844-1350  
[luke.hajek@usdoj.gov](mailto:luke.hajek@usdoj.gov)

*Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

|  |  |
|--|--|
| ROSEBUD SIOUX TRIBE, <i>et al.</i> ,<br><br>Plaintiffs,<br><br>v.<br><br>JOSEPH R. BIDEN, <sup>1</sup> <i>et al.</i> ,<br><br>Defendants,<br><br>and<br><br>TC ENERGY CORP., <i>et al.</i> ,<br><br>Defendant-Intervenors. | CV 18-118-GF-BMM<br><br><b>JOINT MOTION FOR STAY</b> |
|--|--|

---

<sup>1</sup> President Joseph R. Biden is substituted for his predecessor in office pursuant to Federal Rule of Civil Procedure 25(d).

Defendants President Joseph R. Biden *et al.* (“Defendants”), Plaintiffs Rosebud Sioux Tribe *et al.*, and Defendant-Intervenors TC Energy Corp *et al.* jointly move for a stay of the case for sixty days. The case has been fully briefed on summary judgment and is pending a decision by the Court. This case involves President Donald J. Trump’s approval of a cross-border permit for the Keystone XL pipeline, as well as actions by various federal agencies and TC Energy. The parties request a stay to allow them to discuss whether further litigation is necessary in light of the President’s revocation of the Presidential permit allowing the pipeline to cross the border.

In a January 20, 2021 Executive Order, President Joseph R. Biden revoked the March 29, 2019 Presidential Permit granted to TransCanada Keystone Pipeline, L.P., for the construction, connection, operation, and maintenance of pipeline facilities at the international border of the United States and Canada. *See* Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7,037, 7,041 (Jan. 20, 2021). After the issuance of the executive order revoking the border-crossing permit, TC Energy announced that it would suspend advancement of the project due to the revocation of the Presidential Permit.<sup>2</sup>

---

<sup>2</sup> *See* <https://www.tcenergy.com/announcements/2021-01-20-tc-energy-disappointed-with-expected-executive-action-revoking-keystone-xl-presidential-permit/>.

The requested stay will not prejudice any party because TC Energy does not intend to construct any new pump stations or to do any further construction of the pipeline over the next sixty days. TC Energy intends to consider the impact of the President's decision on the project and does not intend to move forward with pipeline construction while it conducts that evaluation. If circumstances change and TC Energy later opts to move forward with pipeline construction or construction of new pump stations, it will notify the Court of those plans sixty days in advance of those activities. Such notice does not apply to actions taken by TC Energy in response to an order from the government, dismantling facilities or movement of equipment, or required environmental protection measures. Additionally, TC Energy does not need to provide notice of other security or maintenance activities for existing infrastructure.

In addition, in order for any construction activity to occur on federal lands under the authority of the U.S. Bureau of Land Management ("BLM") and the U.S. Army Corp of Engineers ("Corps"), TC Energy must request a notice to proceed from BLM. *See* U.S. Bureau of Land Management, Record of Decision, Keystone XL Pipeline Project, Decision to Grant Right-of-Way and Temporary Use Permit on Federal Land at 7 (Jan. 20, 2020), attached as Ex. 1. If such a request were submitted, BLM would need to evaluate it to ensure that TC Energy complied with the required terms of the right-of-way grant, and that evaluation would likely take

at least several weeks. No such application has been submitted, and if an application is submitted, Defendants will notify the Court. Further, TC Energy is required to schedule a preconstruction conference with BLM prior to commencing any construction or ground-disturbing activities on federal land and must notify BLM at least 30 days in advance of such preconstruction conference. *See* U.S. Bureau of Land Management, Right-of-Way Grant MTM-98191, Temporary Use Permit MTM-98191-01, at Exhibit B, stipulation 4, attached as Ex. 2. TC Energy has not provided BLM notice of a preconstruction conference, and if TC Energy does provide notice, Defendants will inform the Court.

In light of these developments, the parties respectfully request that the Court stay the current litigation deadlines for sixty days, so that the parties may determine what further proceedings may be necessary in this case. *See Landis v. N. American Co.*, 299 U.S. 248, 254 (1936) (a court has inherent authority to stay litigation). During that time, incoming officials within the U.S. Department of the Interior and other agencies will evaluate the previously issued authorizations for the pipeline. The agencies will evaluate whether the authorizations should be rescinded or suspended in light of the President's action or for other reasons. Given that many positions within the respective agencies' leadership have not yet been filled, this process will likely take several weeks.

At the end of the sixty-day period, the parties will advise the Court whether

further proceedings are necessary and, if so, propose a revised briefing schedule. If the parties need additional time to discuss potential further proceedings, the parties will submit a status report and request additional time to continue their discussions.

Respectfully submitted this 3rd day of February, 2021,

MARK STEGER SMITH  
Assistant U.S. Attorney  
U.S. Attorney's Office  
2601 Second Avenue North, Suite 3200  
Billings, MT 59101  
Ph: (406) 247-4667; Fax: (406) 657-6058  
[mark.smith3@usdoj.gov](mailto:mark.smith3@usdoj.gov)

JEAN E. WILLIAMS  
Deputy Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division

/s/ Luther L. Hajek  
LUTHER L. HAJEK (CO Bar 44303)  
Trial Attorney  
Natural Resources Section  
999 18th Street, South Terrace, Suite 370  
Denver, CO 80202  
Ph: (303) 844-1376; Fax: (303) 844-1350  
[luke.hajek@usdoj.gov](mailto:luke.hajek@usdoj.gov)

*Attorneys for Defendants*

CROWLEY FLECK PLLP

/s/ Jeffery J. Oven  
Jeffery J. Oven  
Jeffrey M. Roth

490 North 31st Street, Ste. 500  
Billings, MT 59103-2529  
Telephone: 406-252-3441  
Email: [joven@crowleyfleck.com](mailto:joven@crowleyfleck.com)  
[jroth@jcrowleyfleck.com](mailto:jroth@jcrowleyfleck.com)

SIDLEY AUSTIN LLP

/s/ Peter C. Whitfield  
Peter C. Whitfield  
Joseph R. Guerra  
1501 K Street, N.W.  
Washington, DC 20005  
Telephone: 202-736-8000  
Email: [pwhitfield@sidley.com](mailto:pwhitfield@sidley.com)  
[jguerra@sidley.com](mailto:jguerra@sidley.com)

*Attorneys for Defendant-Intervenors  
TC Energy Corp. et al.*

Wesley James Furlong (MT Bar No. 42771409)  
NATIVE AMERICAN RIGHTS FUND  
745 West 4th Avenue, Suite 502  
Anchorage, AK 99501  
Tel. (907) 276-0680  
Fax (907) 276-2466  
[wfurlong@narf.org](mailto:wfurlong@narf.org)

Matthew L. Campbell (pro hac vice)  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, CO 80302  
Tel. (303) 447-8760  
Fax (303) 443-7776  
[mcampbell@narf.org](mailto:mcampbell@narf.org)

*Matthew Campbell*  
Staff Attorney

Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302-6296  
[mcampbell@narf.org](mailto:mcampbell@narf.org)  
P:303-447-8760  
Direct: 720-647-9636  
F:303-443-7776

*Attorneys for Plaintiffs  
Rosebud Sioux Tribe et al.*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(d)(2)(E), the foregoing brief is proportionately spaced, has a typeface of 14 points, and contains 737 words, excluding the tables, caption, signature, certificate of compliance, and certificate of service.

/s/ *Luther L. Hajek*  
LUTHER L. HAJEK  
U.S. Department of Justice



**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2021, a copy of the foregoing Joint Motion for Stay was served on all counsel of record via the Court's CM/ECF system.

/s/ Luther L. Hajek  
LUTHER L. HAJEK  
U.S. Department of Justice